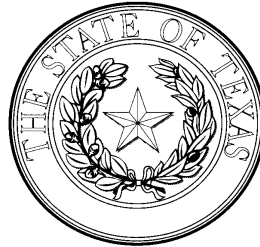


Opinion issued July 7, 2020



In The
Court of Appeals
For The
First District of Texas

NO. 01-18-01056-CV

PETER JP II DOE, JANE JP II DOE, JON JP II DOE, AND BOB JP II DOE,
Appellants

V.

**THE ARCHDIOCESE OF GALVESTON-HOUSTON; ST. JOHN PAUL II
CATHOLIC SCHOOL; REBECCA BOGARD, CINDY KIM, AND
THERESA BRAMANTI, Appellees**

**On Appeal from the 157th District Court
Harris County, Texas
Trial Court Case No. 2018-50814**

MEMORANDUM OPINION

Peter and Jane JP II Doe sued their sons' parochial school, its employees, and the Archdiocese of Galveston-Houston after their sons were expelled from school. The trial court granted a plea to the jurisdiction based on the doctrine of ecclesiastical

abstention. On appeal, the appellants assert that the ecclesiastical abstention doctrine does not apply because they alleged tortious action—including verbal abuse of their children—and breach of contract. We affirm.

Background

St. John Paul II Catholic School is a private, nonprofit Catholic school that educates children from pre-kindergarten through eighth grade. The school’s stated mission is to prepare “all students spiritually and academically to succeed in life and to do God’s will.” The Family Handbook repeatedly mentions the school’s philosophy and emphasis on “Christian values” and the “Catholic faith.” Among other things, it states: “St. John Paul II Catholic School parents, students, and faculty provide a strong Christian community as the platform from which all learning takes place. The community recognizes the importance of all of its members as teachers and models of Christian education.” For example, once a week and for religious celebrations, the school’s “gym and student activity center” “becomes a church.”

St. John Paul II Catholic School is a legal entity that is separate from the Archdiocese of Galveston-Houston, but it is “one of the 60 Catholic schools within the Archdiocese’s school system.” The Archdiocese does not control the school, but the school adheres to archdiocesan curriculum guides and selects textbooks from an approved textbook list provided by the Archdiocese. As required by the Archdiocese, the school is accredited by the Texas Catholic Conference of Bishops

Education Department, and it meets “certain criteria which are intended to strengthen the Catholic school mission and identity,” such as following a religious curriculum.

The school’s Family Handbook specifies the importance of communication: “Parent/teacher communication is crucial to the success of students and strengthens the school/home relationship.” The school also sets forth responsibilities applicable to parents beyond the payment of tuition, which include generally the responsibility to communicate in accordance with “Christian charity,” and to refrain from public criticism, gossip, aggressive speech or actions, and breach of privacy.¹ In addition,

¹ **CHRISTIAN CHARITY**

Christian charity and respect shall be observed during any verbal and non-verbal communication at all levels (personnel, students and families) within the school community. The following actions will be deemed in violation of Christian charity and may result in dismissal from school:

1. Public criticism of school personnel, policies, or procedures including social networking.
2. Threats of any nature toward personnel or families.
3. Verbal/non-verbal acts of aggression including yelling, screaming, pushing, etc. in person, via emails, or notes to the staff are not appropriate forms of communication.
4. Public discussion of student and/or family matters based upon confidential information obtained as a result of volunteer duties, etc.
5. Engaging in gossip.

.....

the school stated its expectation that parents raise concerns with the person directly affected and work with the child's teacher first to address any problems that might arise.² The Family Handbook sets forth a dispute resolution process to be used when parents and teachers are unable to resolve problems.³

² **PARENTAL RESPONSIBILITIES**

When enrolling your child in a Catholic school, you agree to certain important responsibilities:

1. To be a partner with the school in the education of your child; to support teacher and/or administrative decisions;
-
5. to discuss concerns and problems with the person(s) most directly involved before contacting higher authorities

³ **PROBLEM RESOLUTION**

Every effort shall be made to resolve situations so that the student's education remains positive. Before differences become formalized grievances, both parties shall make every effort to resolve problems through open communication. When a parent seeks resolution of a situation relating to a student, the following steps should be taken.

1. Please address the child's teacher first.
2. If the matter cannot be satisfactorily resolved with the teacher, the parent may then discuss the issue with the assistant principal.
3. If the matter cannot be satisfactorily resolved with the assistant principal, the parent may then discuss the issue with the principal.
4. If, after discussion with the parent and the teacher, the principal cannot settle the case, the complainant shall present the grievance to the St. John Paul II Board of Directors.

....

Jane and Peter enrolled their young sons in school at St. John Paul II Catholic School for the 2017–18 school year. Jon was enrolled in first grade, and Bob was enrolled in pre-kindergarten. When they signed the enrollment contract, Jane and Peter agreed to abide by the school’s rules, and they acknowledged that they had read and agreed to be governed by the school’s Family Handbook.

Bob struggled with behavior and social skills. Between August 2017 and February 2018, Bob’s teacher, Cindy Kim, sent five handwritten notes to Jane and Peter asking for their help. In these notes, the teacher expressed her fondness for Bob and identified areas in which his behavior fell short of expectations, including: spitting on and hitting classmates; kicking and hitting classmates to get their attention; biting a classmate who pushed him on the playground; hitting a classmate and throwing food at lunch; and poking a friend in the eye with a stick at the end of recess. Kim wrote that she witnessed Bob poking “a friend in the eye” with a stick and that he “was in no way provoked.” Kim described the incident as “quite scary as he came very close to her eye.”

Consistent with the Mission Statement, it is the responsibility of the Board of Directors and all Parents, Students, school administration and staff to educate the Students of St. Jon Paul II Catholic School in a prayerful and professional manner. In furtherance of this goal, it is the expectation of the Board that all Parents, Students, school administration, teachers and staff work together, *solely in the best interests of the Student body*, to resolve all grievances that may arise, and with courtesy and respect towards each other.

In December 2017, parents of Bob's classmate wrote several emails to Kim because they were concerned that Bob was bullying their child. They explained that their son "was covered in mulch" after school and that he told his parents Bob had thrown "mulch at his neck and then laughed about it." The father of the classmate later requested a meeting when his son came "home with a bruise below his right eye and scratches on the side of his nose." The classmate's father wrote that his son told him that Bob "slammed his face into the floor while he was sitting down singing," and that he "was thrown down from behind while minding his own business."

In their petition, Jane and Peter alleged that they had suspected that Kim, the teacher, was bullying and verbally abusing Bob and that their efforts to determine what was happening in Bob's class "were met with evasive responses and accusations against Bob." They alleged that their fears that Kim was bullying Bob "had been so extreme" that they "resorted to placing a recording device" on Bob "to create a record of what Defendant Kim was saying to their precious son."

About a week after the incident in which Bob poked a classmate with a stick, Bob asked Kim if he could change his pants because they "were bothering him." When he changed his pants, the school discovered that a recording device had been sewn into the pants. The school's principal, Rebecca Bogard, and the assistant principal, Suzy de Leon, met with Jane, who attended in person, and Peter, who

attended by phone. Bogard told Jane and Peter “that their actions violated the privacy and safety rights of the other children in the class,” and she “explained that their actions were inconsistent with their commitment to be partners with the school.”

In her affidavit, which was attached to the school’s plea to the jurisdiction, Bogard described how she determined what action to take in response to Jane and Peter’s actions. She averred that she “(a) consulted with relevant St. John Paul II staff and Theresa Bramanti [President of the Board of Directors], (b) reviewed St. John Paul II’s policies in the Parent/Student Handbook, (c) placed Jane and Peter’s actions in the context of St. John Paul II’s mission, (d) considered the Christian values of mercy and forgiveness, and (e) prayed for God’s guidance.” She concluded that Jane and Peter’s actions were “a breach of trust and partnership and were too damaging to the St. John Paul II community to allow their continued association with the school.” After “prayerful deliberation,” Bogard expelled the family from the school.

Jane sent an email to the school on behalf of herself and Peter. She stated that “the recording device was not aimed at” Bob’s teachers. Rather, she described it as “an act of desperation” to help them understand what triggers Bob’s behavior. She apologized for making the teachers feel “like we do not trust you.” She wrote that they “truly appreciate everything you all do” for Bob, said that it had “never been about” the teachers, and promised it would never happen again.

About a week later, Jane and Peter appealed the expulsion to the board of directors in accordance with the Parent/Student Handbook. The board declined to accept the discretionary appeal. In a letter to Jane and Peter, Bogard and Bramanti called the situation “an administrative matter.” They wrote:

The Principal has the full authority to act in administrative matters where policy violations have taken place, such as here, and the Board does not engage in second guessing or reversing such administrative decisions.

We agree with you that this is a regrettable incident, and we appreciate your apologies for taking the action you did, but we continue to support the school administration. We will pray for your family, and wish you the very best.

About two weeks after receiving the letter regarding the appeal, Jane emailed Bogard, asking her to “find it in your heart to reconsider your decision regarding our family.” She described the anguish she, Peter, and the children felt at being expelled from the school community, and she asked for the children to be readmitted to the school, saying “we beg for your and JPII administration forgiveness.”

Meanwhile, at Jane and Peter’s request, Bogard, Kim, and other school employees “sent in recommendation forms” to other Catholic schools. In addition, the one non-Catholic school to which Jane and Peter applied “directly requested a recommendation,” and Bogard sent in a recommendation form. Debra Haney, the Superintendent of Catholic Schools in Houston, acting on behalf of Cardinal DiNardo, the Archbishop for the Archdiocese of Galveston-Houston, contacted

Bogard to ask if she would reconsider the expulsion. Bogard explained her decision, yet she expressed her opinion that the family should get a second chance at another Catholic school. Bogard also had one phone call with the principal of another Catholic school, in which Bogard “truthfully explained what had happened” and indicated her belief that the family should get a second chance at another Catholic school.

After the phone call with Bogard, Superintendent Haney reached out to other schools about possibly admitting Jon and Bob. She spoke to the principals of two Catholic schools and “expressed the Archdiocese’s position that the children should be given the chance to obtain a Catholic education.” Haney averred that enrollment at one school was full, and the other school had room for only one child, not both of them.

Jon and Bob were eventually admitted to a secular school, and in July 2018, Jane and Peter filed the underlying lawsuit against the Archdiocese, St. John Paul II Catholic School, Bogard, Kim, and Bramanti. They alleged that Bob had been “the victim of verbal abuse and emotional bullying” by Kim and others employed by the school. They alleged that the expulsion of their family was in retaliatory and an effort to conceal the abuse. They also alleged that Bogard and Bramanti hindered their efforts to enroll Jon and Bob in another private school.

In the trial court, the Archdiocese and the school defendants filed pleas to the jurisdiction alleging that the court lacked jurisdiction due to the ecclesiastical abstention doctrine. The trial court granted the pleas to the jurisdiction and dismissed the cases. Jane and Peter appealed.

Analysis

I. Standards of review for a plea to the jurisdiction mirror the standards of review for traditional summary judgments.

A party may challenge a trial court's subject matter jurisdiction by filing a plea to the jurisdiction. *See Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000). We review a trial court's ruling on a plea to the jurisdiction de novo. *Univ. of Tex. M.D. Anderson Cancer Ctr. v. McKenzie*, 578 S.W.3d 506, 512 (Tex. 2019) (citing *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004))

Ordinarily a plea to the jurisdiction challenges the plaintiff's pleadings, asserting that the alleged facts do not affirmatively demonstrate the court's jurisdiction. *See Mission Consol. Indep. Sch. Dist. v. Garcia*, 372 S.W.3d 629, 635 (Tex. 2012). We "construe the plaintiff's pleadings liberally, taking all factual assertions as true, and look to the plaintiff's intent." *Heckman v. Williamson Cty.*, 369 S.W.3d 137, 150 (Tex. 2012).

A plea to the jurisdiction may also challenge the existence of jurisdictional facts, and when it does, the parties may present evidence. *Mission Consol. Indep.*

Sch. Dist., 372 S.W.3d at 635. “In those situations, a trial court’s review of a plea to the jurisdiction mirrors that of a traditional summary judgment motion.” *Id.* The movant must present summary-judgment proof demonstrating that the court lacks jurisdiction. *Id.* The burden then shifts to the nonmovant to show that there is a disputed material fact on the jurisdictional issue. *Id.*; see TEX. R. CIV. P. 166a(c) (to prevail on a traditional summary judgment motion, the movant must establish that no genuine issues of material fact exist and that it is entitled to judgment as a matter of law).

II. Ecclesiastical Abstention doctrine

“Government action may burden the free exercise of religion in two quite different ways: by interfering with an individual’s observance or practice of a particular faith . . . and by encroaching on the church’s ability to manage its internal affairs.” *C.L. Westbrook, Jr. v. Penley*, 231 S.W.3d 389, 395 (Tex. 2007) (citations omitted). Both legislative and judicial governmental action are restrained by the Free Exercise Clause of the First Amendment to the United States Constitution, which applies to the states through the Fourteenth Amendment. *Masterson v. Diocese of Nw. Tex.*, 422 S.W.3d 594, 601 (Tex. 2013) (citing *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940)); *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713–14 (1976); *Mouton v. Christian Faith Missionary Baptist Church*, 498 S.W.3d 143, 148–49 (Tex. App.—Houston [1st Dist.] 2016, no pet.). The ecclesiastical

abstention doctrine refers to the principle that the First Amendment precludes courts from exercising jurisdiction over matters concerning “theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them.” *Milivojevich*, 426 U.S. at 713–14. “Among its prohibitions, the Free Exercise Clause precludes government action that burdens the free exercise of religion ‘by encroaching on the church’s ability to manage its internal affairs.’” *In re Episcopal Sch. of Dall., Inc.*, 556 S.W.3d 347, 352–53 (Tex. App.—Dallas 2017, orig. proceeding) (quoting *Westbrook*, 231 S.W.3d at 395).

“Although wrongs may exist in the ecclesiastical setting, and although the administration of the church may be inadequate to provide a remedy, the preservation of the free exercise of religion is deemed so important a principle it overshadows the inequities that may result from its liberal application.” *In re Alief Vietnamese All. Church*, 576 S.W.3d 421, 428–29 (Tex. App.—Houston [1st Dist.] 2019) (orig. proceeding) (quoting *Williams v. Gleason*, 26 S.W.3d 54, 59 (Tex. App.—Houston [14th Dist.] 2000, pet. denied)); see *Masterson*, 422 S.W.3d at 605–06 (“Courts do not have jurisdiction to decide questions of an ecclesiastical or inherently religious nature, so as to those questions they must defer to decisions of appropriate ecclesiastical decision makers.”).

While secular courts may not decide religious or ecclesiastical questions, civil courts may exercise jurisdiction over civil, contract, and property disputes in which church officials happen to be involved. See *Episcopal Sch. of Dall.*, 556 S.W.3d at 353; *In re St. Thomas High Sch.*, 495 S.W.3d 500, 507 (Tex. App.—Houston [14th Dist.] 2016) (orig. proceeding) (“The United States Supreme Court has recognized an exception to the doctrine of church autonomy when neutral principles of law may be applied to resolve disputes over ownership of church property so long as the resolution of ownership entails no inquiry into religious doctrine and the interpretation of the instruments of ownership would not require the court’s resolution of a religious controversy.”).

In determining whether the ecclesiastical abstention doctrine applies, we consider the “substance and effect of a plaintiff’s complaint to determine its ecclesiastical implication.” *Westbrook*, 231 S.W.3d at 405 (citations omitted). The “key inquiry is whether a judicial resolution will encroach on the institution’s governance and affairs.” *Episcopal Sch. of Dall.*, 556 S.W.3d at 356; cf. *Westbrook*, 231 S.W.3d at 399 (“Courts have no jurisdiction to ‘revise or question ordinary acts of church discipline’ and ‘cannot decide who ought to be members of the church, nor whether the excommunicated have been justly or unjustly, regularly or irregularly cut off from the body of the church.’”) (quoting *Watson v. Jones*, 80 U.S. 679, 727 (1871)); *Mouton v. Christian Faith Missionary Baptist Church*, 498 S.W.3d

143, 151 (Tex. App.—Houston [1st Dist.] 2016, no pet.) (church has right to control membership without governmental interference).

Texas courts have applied the ecclesiastical abstention doctrine to dismiss suits against religious schools or officials with authority over religious schools, even when such schools are not directly owned by a church. *Episcopal Sch. of Dall.*, 556 S.W.3d at 357 (school not owned by church was a faith-based institution); *St. Thomas High Sch.*, 495 S.W.3d at 509 (same); *In re Vida*, No. 04-14-00636-CV, 2015 WL 82717, at *3 (Tex. App.—San Antonio Jan. 7, 2015, orig. proceeding [mand. denied]) (same). Although the Supreme Court of Texas has not addressed this issue, three sister courts have held that a faith-based school’s management of its internal affairs and governance—including the expulsion, retention, or promotion of students—are ecclesiastical matters to which the ecclesiastical abstention doctrine applies. *See Episcopal Sch. of Dall.*, 556 S.W.3d at 357; *St. Thomas High Sch.*, 495 S.W.3d at 509; *Vida*, 2015 WL 82717, at *3.

III. The trial court properly granted the pleas to the jurisdiction.

In their petition, the plaintiffs alleged that they selected St. John Paul II School for their sons because it offered a learning environment “based on spiritual faith and love.” They alleged that Bob’s experience in his pre-kindergarten class “was filled with frustration, anxiety, and purported discipline matters,” and that they received unsatisfactory responses to their questions about what was happening. According to

the petition, in February 2018, Jane and Peter communicated to Bogard and Kim their belief that Kim was bullying and verbally abusing Bob. They maintained that in response to their voicing these concerns, Bogard immediately expelled the boys. Jane and Peter alleged that their appeals within the St. John Paul II School system were “summarily denied.” They also pleaded that they were unable to enroll their children in alternative private schools of their choosing and that they believed that the school, Bogard, Bramanti, and the Archdiocese were discouraging other schools from accepting the children. They pleaded that it was their belief that the expulsion and alleged subsequent blackballing were done to cover up the alleged abuse by Kim.

Based on these allegations, the plaintiffs pleaded causes of action for breach of contract, violations of the Texas Deceptive Trade Practices Act, fraud, intentional infliction of emotional distress, tortious interference, and conspiracy.⁴

The parties do not dispute that both St. John Paul II School and the Archdiocese are faith-based institutions, that Bogard and Kim were employees of the school, and that Bramanti acted on behalf of the Archdiocese. Therefore, all the defendants are protected from governmental interference by the Free Exercise clause of the First Amendment to the United States Constitution. *See Masterson*, 422

⁴ They also alleged intentional bullying. This is not a recognized cause of action in Texas.

S.W.3d at 601. The ecclesiastical abstention doctrine will bar jurisdiction if matters to be decided in this case are religious or ecclesiastical questions as opposed to civil, contract, or property disputes that may be determined on neutral principles. *See Episcopal Sch. of Dall.*, 556 S.W.3d at 352–53; *St. Thomas High Sch.*, 495 S.W.3d at 507.

Jane and Peter argue that the trial court erred by dismissing their suit because their claims alleged violations of the common law and breaches of contract that are not “of an ecclesiastical or inherently religious nature.” They contend that their children were expelled for reasons that have nothing to do with religion, i.e., not because the children “did not want to attend mass, say their prayers, or genuflect when entering the Church.” Rather, they argue that Bob’s misbehavior and their advocacy on his behalf were secular in nature and therefore, their causes of action do not require a review or interpretation of the teachings of the Catholic church.

The jurisdictional evidence supplied by the school defendants and the Archdiocese tells a somewhat different story—one involving a breach of trust by Jane and Peter and breach of the rules broadly included in the school’s Family Handbook. Nevertheless, we need not accept the appellees’ jurisdictional evidence as true to conclude that the trial court did not err in ruling on the pleas to the jurisdiction because the management of internal affairs, conformity of members to the moral standards required of them, and, in the context of an educational faith-

based institution, the expulsion or retention of students are considered ecclesiastical matters to which the ecclesiastical abstention doctrine applies. *See Milivojevich*, 426 U.S. at 713–14; *Episcopal Sch. of Dall.*, 556 S.W.3d at 357; *St. Thomas High Sch.*, 495 S.W.3d at 508–09; *Vida*, 2015 WL 82717, at *3. All the claims in this suit arise from the expulsion and alleged blackballing of the children from other schools. Whatever the reason for the expulsion of the children, Jane and Peter’s claims are not justiciable in a civil court. *See Williams*, 26 S.W.3d at 59 (free exercise of religion precludes jurisdiction over ecclesiastical matters even when the church administration is inadequate to provide a remedy).

We conclude that the trial court correctly granted the plea to the jurisdiction based on the doctrine of ecclesiastical abstention, and we overrule both appellate issues.

Conclusion

We affirm the judgment of the trial court.

Peter Kelly
Justice

Panel consists of Chief Justice Radack and Justices Kelly and Goodman.